



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/149531

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2013, under Wis. Admin. Code §HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued petitioner's FS effective May 1, 2013 because he is a drug felon and failed a drug test.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Paul Frederickson
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was convicted of a drug felony in Wisconsin within the past 5 years (06-17-2011).

3. On March 20, 2013 petitioner completed his FS renewal and was notified that he was required to submit to a drug test in order to receive FS. See Exhibit 3 and 4.
4. The petitioner did submit to the drug test and tested positive for “OPI”, “BUP, and “COC” on May 13, 2013. See Exhibit 1 and 2.
5. On May 23, 2013 the agency issued a Notice to the petitioner, informing the petitioner that his FS would be discontinued effective May 1, 2013 and that he could not get FS for 12 months thereafter because he had failed a drug test. See Exhibit 3.

DISCUSSION

For FS eligibility purposes, a drug felon is a person who is convicted of a felony in a state or federal court involving the possession, use or distribution of a controlled substance within the last 5 years. Convicted drug felons must have a negative drug test result to become or remain eligible for FS. See *FS Handbook (FSH)* §§3.19.1 and 3.19.1.2 and 7 CFR §273.11(m). Drug felons that test positive (fail) for controlled substances will be sanctioned for 12 months. *Id.*

In this case, the petitioner does not dispute that he is a convicted drug felon or that he failed the test. Rather, he argues that he did not know of the policy and had difficulty getting his test results. Ignorance is not a defense here however, and the effective date of this policy goes back to at least 2005 according to the *FSH* History and was made in accordance with the duly promulgated 7 CFR §273.11. I further do not have any power to change the result based on any fairness argument, as it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I add, for petitioner’s benefit that in order to regaining eligibility for FS after 12 months he must reapply and submit to another drug test. If the second drug test is negative, he may be eligible for FS as of the first of the month following the month in which the he agrees to take the test. If the second test results are positive, he is ineligible for the FS program for an additional 12 months. As with other sanctions that end, the individual must re-request FS. He will not automatically be eligible when the sanction period ends. See *FSH* §3.19.1.3.

Having no evidence to the contrary, I must find the agency acted correctly here.

CONCLUSIONS OF LAW

The agency properly determined petitioner’s FS benefits should end effective May 1, 2013 because he is a drug felon and failed a drug test.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

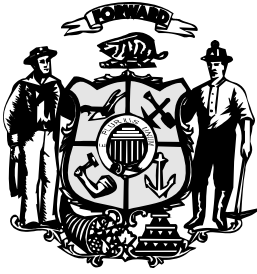
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of August, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 7, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability